

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FULL CIRCLE UNITED, LLC,

Plaintiff,

v.

BAY TEK ENTERTAINMENT, INC.,

Defendant.

CASE NO. 1:20-CV-03395-BMC

BAY TEK ENTERTAINMENT, INC.,

Counterclaim Plaintiff,

v.

FULL CIRCLE UNITED, LLC,

Counterclaim Defendant,

and

ERIC PAVONY,

Additional Counterclaim  
Defendant.

**SUPPLEMENTAL DECLARATION OF JEFFREY M. MOVIT**

I, Jeffrey M. Movit, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a Partner, through my Professional Corporation, of the law firm Mitchell Silberberg & Knupp LLP (“MSK”), which is counsel for Defendant/Counterclaim Plaintiff Bay Tek Entertainment, Inc. (“Bay Tek”) in the above-captioned action. I make the statements herein on personal knowledge.

**Audiovisual Exhibits Being Lodged with the Court**

2. Annexed hereto as **Video Exhibit 1**, being lodged with the Court under separate cover, is a true and correct copy of a video marked as Exhibit 14 at the Deposition of Holly Hampton, consisting of The Roll for Ohio Skee-Ball Tournament Video available at <https://www.youtube.com/watch?v=1tB34DiG-LE>, dated November 5, 2018.

3. Annexed hereto as **Video Exhibit 2**, being lodged with the Court under separate cover, is a true and correct copy of a video bearing Bates number FCU000000183, consisting of the September 6, 2017 Diner Video.

4. Annexed hereto as **Video Exhibit 3**, being lodged with the Court under separate cover, is a true and correct copy of a video bearing Bates number BT0000516, consisting of “State of the Brewnion 2018.”

5. Annexed hereto as **Video Exhibit 4**, being lodged with the Court under separate cover, is a true and correct copy of The Bar Stool Yak Live Video, dated August 12, 2021, available at <https://www.youtube.com/watch?v=EZ3viLrl2Zo>.

6. Annexed hereto as **Video Exhibit 5**, being lodged with the Court under separate cover, is a true and correct copy of a video bearing Bates number FCU000010110, consisting of Video of Call between Pavony and Petro dated March 23, 2018.

7. Annexed hereto as **Video Exhibit 6**, being lodged with the Court under separate cover, is a true and correct copy of a video bearing Bates number FCU000010111, consisting of Video of Call Between Pavony and Petro dated December 15, 2016 (part one).

8. Annexed hereto as **Video Exhibit 7**, being lodged with the Court under separate cover, is a true and correct copy of a video bearing Bates FCU000010112, consisting of Video of Call Between Pavony and Petro dated December 15, 2016 (part two).

9. Annexed hereto as **Video Exhibit 8**, being lodged with the Court under separate cover, is a true and correct copy of a video bearing Bates number FCU000010113, consisting of Video of Call Between Pavony and Petro dated December 15, 2016 (part three).

10. Annexed hereto as **Video Exhibit 9**, being lodged with the Court under separate cover, is a true and correct copy of a video bearing Bates number FCU000010114, consisting of Video of Call Between Pavony and Petro dated September 28, 2018 (part one).

11. Annexed hereto as **Video Exhibit 10**, being lodged with the Court under separate cover, is a true and correct copy of a video bearing Bates number FCU000010115, consisting of Video of Call Between Pavony and Petro dated September 28, 2018 (part two).

12. Annexed hereto as **Video Exhibit 11**, being lodged with the Court under separate cover, is a true and correct copy of a video bearing Bates number FCU000010116, consisting of Video of Call Between Pavony and Petro dated September 28, 2018 (part three).

13. Annexed hereto as **Video Exhibit 12**, being lodged with the Court under separate cover, is a true and correct copy of a video bearing Bates number FCU000010124, consisting of Video of Call Between Pavony and Petro dated August 1, 2018.

#### **The July 17, 2014 License Agreement**

14. Annexed hereto as **Exhibit 2** is a true and correct copy of the July 17, 2014 Confidential Trademark License Agreement (the “License Agreement”), marked as Exhibit 4 and authenticated at the June 13, 2022 Deposition of Counterclaim Defendant Eric Pavony.<sup>1</sup>

#### **Deposition Testimony in this Matter**

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<sup>1</sup> Regular (*i.e.* non-video) exhibits referenced herein are numbered consecutively following Exhibit 1 to the initial Declaration of Jeffrey M. Movit in support of Bay Tek’s Motion for Judgment on the Pleadings, filed September 30, 2021 (Dkt. No. 35).

Depositions Taken by Bay Tek

15. Annexed hereto as **Exhibit 3** are true and correct copies of pages excerpted from the transcript of the Deposition of Counterclaim Defendant **Eric Pavony**, in his individual capacity and as designated representative of Plaintiff/Counterclaim Defendant Full Circle United, LLC (“FCU”), taken in this matter on July 13-14, 2022.

16. Annexed hereto as **Exhibit 4** are true and correct copies of pages excerpted from the transcript of the Deposition of **Eric Wikman**, in his individual capacity and as designated representative of Plaintiff/Counterclaim Defendant FCU, taken in this matter on May 25-26, 2022.

17. Annexed hereto as **Exhibit 5** are true and correct copies of pages excerpted from the transcript of the Deposition of **Eric Cooper** taken in this matter on June 6, 2022 and June 8, 2022.

18. Annexed hereto as **Exhibit 6** are true and correct copies of pages excerpted from the transcript of the Deposition of **Laura Smith** taken in this matter on July 6, 2022.

Depositions Taken by FCU

19. Annexed hereto as **Exhibit 7** are true and correct copies of pages excerpted from the transcript of the Deposition of **Holly Hampton**, in her individual capacity and as designated representative of Bay Tek, taken in this matter on June 20, 22, and 30, 2022.

20. Annexed hereto as **Exhibit 8** are true and correct copies of pages excerpted from the transcript of the Deposition of **Larry Treankler** taken in this matter on July 12, 2022.

21. Annexed hereto as **Exhibit 9** are true and correct copies of pages excerpted from the transcript of the Deposition of **Eric Schadrie** taken in this matter on March 8, 2022.

22. Annexed hereto as **Exhibit 10** are true and correct copies of pages excerpted from the transcript of the Deposition of **George Petro** taken in this matter on January 21, 2022.

23. Annexed hereto as **Exhibit 11** are true and correct copies of pages excerpted from the transcript of the Deposition of Gaetan Philippon taken in this matter on March 10, 2022.

24. Annexed hereto as **Exhibit 12** are true and correct copies of pages excerpted from the transcript of the Deposition of **Rick Rochetti** taken in this matter on May 13, 2022.

**Exhibits Marked at Depositions**

25. Annexed hereto as **Exhibit 13** is a true and correct copy of a document marked as Exhibit 8 at the Deposition of Eric Wikman, bearing Bates numbers FCU000010267 through FCU000010271.

26. Annexed hereto as **Exhibit 14** is a true and correct copy of a document marked as Exhibit 23 at the Deposition of Eric Wikman, consisting of a true and correct printout of a document produced in this action as FCU\_EXPERT\_0000966.xlsx.

27. Attached hereto as **Exhibit 15** is a true and correct copy of a document marked as Exhibit 07 at the Deposition of Eric Pavony, bearing Bates numbers FCU EXPERT 0001098 through FCU\_EXPERT\_0001120.

28. Annexed hereto as **Exhibit 16** is a true and correct copy of a document marked as Exhibit 18 at the Deposition of Eric Pavony, which was accessed and printed by a member of my office working under my direction and supervision from the URL <https://www.facebook.com/fullcirclebar/photos/a.333181100316/10164341435435317/> on or about June 9, 2022.

29. Attached hereto as **Exhibit 17** is a true and correct copy of a document marked as Exhibit 21 at the Deposition of Eric Pavony, dated May 9, 2019 and bearing Bates numbers FCU000005629 through FCU000005634.

30. Attached hereto as **Exhibit 18** is a true and correct copy of a document marked as Exhibit 23 at the Deposition of Eric Pavony, dated December 17, 2019 and bearing Bates numbers FCU000002974 through FCU000002982.

31. Annexed hereto as **Exhibit 19** is a true and correct copy of a document marked as Exhibit 33 at the Deposition of Gaetan Philippon, titled “CONFIDENTIAL SETTLEMENT AGREEMENT,” bearing Bates numbers BT0004416 through BT0004429.

32. Annexed hereto as **Exhibit 20** is a true and correct copy of a document dated February 23, 2016 marked as Exhibit 38 at the Deposition of Gaetan Philippon, bearing Bates numbers BT0003832 through BT0003834.

33. Annexed hereto as **Exhibit 21** is a true and correct copy of a document marked as Exhibit 39 at the Deposition of Gaetan Philippon, titled “ASSIGNMENT AND ASSUMPTION AGREEMENT.”

34. Attached hereto as **Exhibit 22** is a true and correct copy of a document marked as Exhibit 21 at the Deposition of Eric Schadrie, dated July 20, 2017 and bearing Bates numbers FCU000002453 through FCU000002455.

35. Annexed hereto as **Exhibit 23** is a true and correct copy of a document marked as Exhibit 32 at the Deposition of Eric Cooper, containing a document bearing Bates numbers FCU000015850 through FCU000015857.

36. Annexed hereto as **Exhibit 24** is a true and correct copy of a document marked as Exhibit 33 at the Deposition of Eric Cooper, containing a web page printed from the website

www.Brewskeebeall.com on or about September 2, 2020 by a member of my office working under my direction and supervision.

37. Annexed hereto as **Exhibit 25** is a true and correct copy of a document marked as Exhibit 34 at the Deposition of Eric Cooper, containing a document bearing Bates numbers FCU000020350 through FCU000020352

38. Annexed hereto as **Exhibit 26** is a true and correct copy of the initial report of FCU's expert Laura Smith, marked as Exhibit 2 at Ms. Smith's deposition.

39. Annexed hereto as **Exhibit 27** is a true and correct copy of the reply report of FCU's expert Laura Smith, marked as Exhibit 3 at Ms. Smith's deposition.

**Discovery Responses of FCU and Eric Pavony**

40. Annexed hereto as **Exhibit 28** is a true and correct copy of FCU's Amended Response to Bay Tek's First Set of Requests for Admission, served on March 5, 2021. 0125 FCU RFA01 3/5/2021.

41. Annexed hereto as **Exhibit 29** is a true and correct copy of Eric Pavony's Amended Response to Bay Tek's First Set of Requests for Admission, served on March 5, 2021. 0304 Pavony RFA01 3/5/2021.

42. Annexed hereto as **Exhibit 30** is a true and correct copy of Eric Pavony's Amended Responses to Bay Tek's Second Set of Requests for Admission, served on December 1, 2021. 0317 Pavony RFA02 12/1/21.

43. Annexed hereto as **Exhibit 31** is a true and correct copy of FCU's Amended Answers to Bay Tek's First Set of Interrogatories, marked as Exhibit 16 at the Deposition of Eric Wikman in this matter.

44. Annexed hereto as **Exhibit 32** is a true and correct copy of Eric Pavony's Amended Answers to Bay Tek's First Set of Interrogatories, served on March 5, 2021. 0306 Pavony Amended Rogs01 3/5/2021.

45. Annexed hereto as **Exhibit 33** is a true and correct copy of FCU's Amended Answers to Bay Tek's Second Set of Interrogatories, served on December 15, 2021. 0134 Amended Rogs02 12-15-21.

46. Annexed hereto as **Exhibit 34** is a true and correct copy of FCU's further Amended Answers to Bay Tek's Second Set of Interrogatories served on January 7, 2022. 0135 FCU Amended Rogs 10 and 25 1-7-22.

**Additional Documents Produced by Full Circle United**

47. Annexed hereto as **Exhibit 35** is a true and correct copy of a document produced by Plaintiff and Counterclaim Defendant FCU in this matter, bearing Bates number FCU000002782.

48. Annexed hereto as **Exhibit 36** is a true and correct copy of a document produced by Plaintiff and Counterclaim Defendant FCU in this matter, bearing Bates numbers FCU000002788 through FCU000002801.

49. Annexed hereto as **Exhibit 37** is a true and correct copy of a document produced by Plaintiff and Counterclaim Defendant FCU in this matter, bearing Bates numbers FCU000005621 through FCU000005626.

50. Annexed hereto as **Exhibit 38** is a true and correct copy of a document produced by Plaintiff and Counterclaim Defendant FCU in this matter, bearing Bates numbers FCU000005627 through FCU000005628.



51. Annexed hereto as **Exhibit 39** is a true and correct copy of a document produced by Plaintiff and Counterclaim Defendant FCU in this matter, bearing Bates numbers FCU000005689 through FCU000005692.

52. Annexed hereto as **Exhibit 40** is a true and correct copy of a document produced by Plaintiff and Counterclaim Defendant FCU in this matter, bearing Bates numbers FCU000015294 through FCU000015296.

53. Annexed hereto as **Exhibit 41** is a true and correct copy of a document produced by Plaintiff and Counterclaim Defendant FCU in this matter, bearing Bates number FCU000016067.

**Additional Documents Produced by Bay Tek**

54. Annexed hereto as **Exhibit 42** is a true and correct copy of a printout of a web page on the website Brewskeeball.com, which was accessed and printed on or about September 10, 2020 by an MSK employee working under my direction and supervision, produced by Bay Tek in this matter bearing Bates numbers BT0000070 through BT0000091.

55. Annexed hereto as **Exhibit 43** is a true and correct copy of a page appearing on the “merch” section of the website Brewskeeball.com, which was accessed and captured on or about September 2, 2020 by an MSK employee working under my direction and supervision, produced by Bay Tek in this matter bearing Bates numbers BT0000096 through BT0000098.

56. Annexed hereto as **Exhibit 44** is a true and correct copy of an image appearing in the aforementioned document, referring to “Hepatitis Skee,” captured by an MSK employee working under my direction and supervision and produced by Bay Tek in this matter bearing Bates number BT0000095.

57. Annexed hereto as **Exhibit 45** is a true and correct copy of a page appearing on the website Brewskeeball.com, which was accessed and printed on or about September 1, 2020, by an MSK employee working under my direction and supervision, produced by Bay Tek in this matter bearing Bates numbers BT0000099 through BT00000101.

58. Annexed hereto as **Exhibit 46** is a true and correct copy of an image depicting “Full Circle Magazine” which was accessed online and printed on or about June 15, 2021 by an MSK employee working under my direction and supervision, produced by Bay Tek in this matter bearing Bates number BT0000102.

59. Annexed hereto as **Exhibit 47** is a true and correct copy of an appearing on the website Brewskeeball.com, which was accessed and captured on or about August 28, 2020 by an MSK employee working under my direction and supervision, produced by Bay Tek in this matter bearing Bates numbers BT0000113 through BT0000116.

60. Annexed hereto as **Exhibit 48** is a true and correct copy of a page appearing on the website Brewskeeball.com, which was accessed and captured on or about August 28, 2020 by an MSK employee working under my direction and supervision, produced by Bay Tek in this matter bearing Bates numbers BT0000143 through BT0000148.

61. Annexed hereto as **Exhibit 49** is a true and correct copy of a page appearing on the website Brewskeeball.com, which was accessed and captured on or about August 28, 2020 by an MSK employee working under my direction and supervision, produced by Bay Tek in this matter bearing Bates numbers BT0000168 through BT0000175.

62. Annexed hereto as **Exhibit 50** is a true and correct copy of a page appearing on the website Brewskeeball.com, which was accessed and captured on or about October 23, 2020

by an MSK employee working under my direction and supervision, produced by Bay Tek in this matter bearing Bates numbers BT0000276 through BT0000282.

63. Annexed hereto as **Exhibit 51** is a true and correct copy of a page appearing on the website Brewskeeball.com, which was accessed and captured on or about October 23, 2020 by an MSK employee working under my direction and supervision, produced by Bay Tek in this matter bearing Bates numbers BT0000307 through BT0000324.

64. Annexed hereto as **Exhibit 52** is a true and correct copy of an online image accessed and printed on or about June 15, 2021 by an MSK employee working under my direction and supervision, produced by Bay Tek in this matter bearing Bates number BT0000448.

65. Annexed hereto as **Exhibit 53** is a true and correct copy of a document produced by Bay Tek in this matter bearing Bates numbers BT0001680 through BT00001682.

66. Annexed hereto as **Exhibit 54** is a true and correct copy of a post on the account of ‘Full Circle Bar Brooklyn’ captured from Instagram.com by an MSK employee working under my direction and supervision on or about November 29, 2022, bearing Bates numbers BT0010859 through BT0010863.

67. Annexed hereto as **Exhibit 55** is a true and correct copy of a post on the account of ‘Full Circle Bar Brooklyn’ captured from Instagram.com by an MSK employee working under my direction and supervision on or about November 29, 2022, bearing Bates numbers BT0010864 through BT0010866.

68. Annexed hereto as **Exhibit 56** is a true and correct copy of a post on the account of ‘Full Circle Bar Brooklyn’ captured from Instagram.com by an MSK employee working

under my direction and supervision on or about November 29, 2022, bearing Bates numbers BT0010867 through BT0010874.

69. Annexed hereto as **Exhibit 57** is a true and correct copy of a post on the account of ‘Full Circle Bar Brooklyn’ captured from Instagram.com by an MSK employee working under my direction and supervision on or about November 29, 2022, bearing Bates numbers BT0010875 through BT0010879.

70. Annexed hereto as **Exhibit 58** is a true and correct copy of a post on the account of ‘Full Circle Bar Brooklyn’ captured from Instagram.com by an MSK employee working under my direction and supervision on or about November 29, 2022, bearing Bates numbers BT0010880 through BT0010883.

71. Annexed hereto as **Exhibit 59** is a true and correct copy of a post on the account of ‘Full Circle Bar Brooklyn’ captured from Instagram.com by an MSK employee working under my direction and supervision on or about November 29, 2022, bearing Bates numbers BT0010884 through BT0010887.

72. Annexed hereto as **Exhibit 60** is a true and correct copy of a post on the account of ‘Full Circle Bar Brooklyn’ captured from Instagram.com by an MSK employee working under my direction on or about November 29, 2022, bearing Bates numbers BT0010888 through BT0010892.

73. Annexed hereto as **Exhibit 61** is a true and correct copy of a post on the account of ‘Full Circle Bar Brooklyn’ captured from Instagram.com by an MSK employee working under my direction and supervision on or about November 29, 2022, bearing Bates numbers BT0010893 through BT0010896.

74. Annexed hereto as **Exhibit 62** are true and correct copies of web pages captured from the account “NSBL” on the website Twitch.tv, which were captured by an MSK employee working under my direction and supervision on or about October 23, 2020, and produced in this action bearing Bates numbers BT0000426 through BT0000445.

**Documents and Records Retrieved from Official U.S. Government Websites**

75. Annexed hereto as **Exhibit 63** is a true and correct copy of records retrieved and printed from the website of the United States Patent and Trademark Office at [www.uspto.gov](http://www.uspto.gov) (the “USPTO Website”) by an MSK employee working under my direction and supervision on or about July 23, 2021, reflecting the status of U.S. Trademark Registration No. 256,496 for “SKEE-BALL.” .

76. Annexed hereto as **Exhibit 64** is a true and correct copy of the registration certificate for U.S. Trademark Registration No. 256,496 for “SKEE-BALL”, retrieved on or about December 20, 2022 from the USPTO Website by an MSK employee working under my direction and supervision. ...

77. Annexed hereto as **Exhibit 65** is a true and correct copy of records retrieved and printed from the USPTO Website by an MSK employee working under my direction and supervision on or about December 20, 2022, reflecting the status of U.S. Trademark Registration No. 256,496 for “SKEE-BALL.”

78. Annexed hereto as **Exhibit 66** are true and correct copies of records retrieved and printed from the USPTO Website by an MSK employee working under my direction and supervision on or about December 22, 2022, reflecting various additional live United States trademark registrations for “SKEE-BALL” owned by Bay Tek.

79. Annexed hereto as **Exhibit 67** is a true and correct copy of a recorded document dated February 23, 2016 and identified as Reel/Frame No. 005752/0286, which was retrieved from the USPTO Website by an MSK employee working under my direction and supervision on or about December 21, 2022.

80. Annexed hereto as **Exhibit 68** is a true and correct copy of the registration certificate for U.S. Trademark Registration No. 6,389,191, which was retrieved on or about December 22, 2022 from the USPTO Website by an MSK employee working under my direction and supervision.

81. Annexed hereto as **Exhibit 69** is a true and correct copy of records retrieved and printed from the USPTO Website by an MSK employee working under my direction and supervision on or about December 20, 2022, reflecting the status of U.S. Trademark Registration No. 6,389,191.

82. Annexed hereto as **Exhibit 70** are true and correct copies of records retrieved and printed from the USPTO Website by an MSK employee working under my direction and supervision on or about December 21, 2022, reflecting live U.S. trademark registrations for the word mark “G.I. JOE”.

83. Annexed hereto as **Exhibit 71** are true and correct copies of records retrieved and printed from the USPTO Website by an MSK employee working under my direction and supervision on or about December 21, 2022, reflecting live U.S. trademark registrations for the word mark “BEYONCÉ” and/or “BEYONCE”.

84. Annexed hereto as **Exhibit 72** are true and correct copies of records retrieved and printed from the USPTO Website by an MSK employee working under my direction and

supervision on or about December 21, 2022, reflecting live U.S. trademark registrations for the word mark “AC/DC”.

85. Annexed hereto as **Exhibit 73** are true and correct copies of records retrieved and printed from the USPTO Website by an MSK employee working under my direction and supervision on or about December 21, 2022, reflecting live U.S. trademark registrations for the word mark “TEENAGE MUTANT NINJA TURTLES”.

86. Annexed hereto as **Exhibit 74** are true and correct copies of records retrieved and printed from the USPTO Website by an MSK employee working under my direction and supervision on or about December 21, 2022, reflecting a live U.S. trademark registration for the word mark “PUSSYCAT DOLLS”.

87. Annexed hereto as **Exhibit 75** are true and correct copies of records retrieved and printed from the USPTO Website by an MSK employee working under my direction and supervision on or about December 21, 2022, reflecting live U.S. trademark registrations for the word mark “SHANG-CHI” and “SHANG-CHI AND THE LEGEND OF THE TEN RINGS”.

**Other Documents Pertaining to FCU, Its Claims, and/or Bay Tek’s Counterclaims**

88. Annexed hereto as **Exhibit 76** is a true and correct copy of a letter to the Court filed by counsel for FCU in this matter on or about August 9, 2022, identified as Docket No. 129.

89. Annexed hereto as **Exhibit 77** is a true and correct copy of a page captured from the website YouTube.com on or about August 23, 2021 by an MSK employee working under my direction and supervision, bearing the title “The Barstool Yak LIVE from the Brewskee-Ball® Rematch of the Century presented by Coors Light – YouTube,” reflecting a video available at the Internet address <https://www.youtube.com/watch?v=EZ3viLrl2Zo>.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 23rd day of December, 2022 at New York, New York.

/s/ Jeffrey M. Movit

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JEFFREY M. MOVIT

Executed on December 23, 2022

New York, NY